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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/250,834	02/16/1999	MARY KATHERINE ROBINSON	5079D1-07-LA	2533

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PFIZER, INC.
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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/12/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/259834

Applicant(s)

ROBINSON ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 12-6-01

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 23-40 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 23-40 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 23-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

*Considered
for a 1,1,1 or
amendment* Claims 23-31 are indefinite since it is not clear if chewing gum or a chewing gum composition is part of the claimed product. The preamble of claim 23 merely recites a chewing gum ingredient, and the preamble of claims 24-31 recite "The additive".

Claims 32-40 ^{are} ~~is~~ indefinite since it is not clear if the process includes a step of incorporating the ingredient internally into a chewing gum. If so, then such a step must be claimed. If not, then "said ingredient being incorporated internally into said gum" should be cancelled. Corrections are required without new matter.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,961,935) or Yotka et al (WO 95/08926).

Applicant is referred to paragraph No. 3, Paper No. 13. Additionally, the Palatinit in Cherukuri et al is incorporated internally as part of the chewing gum composition,

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which composition may or may not be coated. The isomalt in Yotka et al may be in powder form, i.e., granules, and is part of the internal gum composition.

5. Claims 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al or Yotka et al as applied to claims 23-31 above, and further in view of Tanaka et al.

Applicant is referred to paragraph No. 4, Paper No. 13.

6. Applicant's arguments filed December 6, 2001 having a Certificate of mailing stamp dated October 29, 2001 have been fully considered but they are not persuasive. Applicant's contention that Cherukuri et al (col.13, lines 50-57 and Table 2) refers to crunch provided by a coating is ill founded and without merit. Cherukuri et al (col. 12, lines 8-22) clearly discloses that Palatinit bulking agent is part of an internal chewing gum "composition". Table 2 (Examples 6 and 7) shows that chewing gum compositions which include Palatinit as the bulking agent are crunchier than chewing gum compositions including sorbitol or mannitol as the bulking agent. These chewing gum compositions may then be coated (col. 13, lines 58-60). Thus, "crunch", a relative term without clear ^{meaning} in this art, is provided the by the Palatinit in Cherukuri et al. . Similarly, since the powdered isomalt in Yotka et al is composed of granules, which are part of the internal chewing gum composition therein, some "crunch", a relative term, is inherently provided thereby. Moreover, the word "crunch" is not a positive limitation of applicant's product claims.

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Although Tanaka et al performs process steps not claimed by applicant, as applicant argues, applicant's claims are open-ended and do not preclude such additional process steps.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday thru Friday 10:00 a.m. to 7:30 p.m. and alternate Mondays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3929. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 305-6078 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
March 8, 2002


ARTHUR L. CORBIN
PRIMARY EXAMINER
3-8-02